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In the Supreme Court of the United States

OCTOBER TERM, 1973

CASE NO. 73-684

ELIAS GANEM,

Petitioner,

vs.

HERLINDA GANEM de ISSA, VICTORIA GANEM de JACIR, SUSANA GANEM de VIVEROS, and OLGA ANDRAUS VDA. de GANEM,

Respondents.

On Petition for Writ of Certiorari to the Florida District Court of Appeal, Third District and/or the Supreme Court of Florida

BRIEF OF RESPONDENTS IN OPPOSITION

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BRIEF OF RESPONDENTS IN OPPOSITION

INTRODUCTION

In this Brief, Respondents, HERLINDA GANEM de ISSA, VICTORIA GANEM de JACIR, SUSANA GANEM de VIVEROS, and OLGA ANDRAUS VDA. de GANEM, Plaintiffs below, will be referred to by name or as "Respondents" and the Defendant below, ELIAS GANEM, will be referred to by name or as "Petitioner". References to the Appendix provided in Petitioner's Brief will be designated "Petitioner's Appendix". References to the Appendix provided in this Brief shall be designated "Respondent's Appendix". The numeral following the reference is the page number of the reference.

STATEMENT

The background facts are briefly as follows: Ganem and C.I.A. (Ganem & Co.) and Fabrica de Manteca y Aceites Vegetales "La India" Ltda., (La Lndia) are family businesses in Cartagena, Colombia. The Ganem family consists of the following members:

Salomon Ganem (Salomon deceased)		Olga Andraus Vda de Ganem (Olga) Respondent	
Elias Ganem (Elias) (Petitioner)	Herlinda Ganem de Issa (Respondent)	Victoria Ganem de Jacir (Respondent)	Susana Ganem de Viveros (Respondent)

All of the persons interested in Ganem & Co. and La India whether as partners, owners, managers, officers or directors, are before this Court in this proceeding.

Ganem & Co. and La India were harmoniously and successfully operated until late in 1963 when the family patriarch, Salomon Ganem, died. The Petitioner, Elias Ganem, was the managing partner of both firms and his mother and sisters relied on him to look after their interest, having each given him a broad power of attorney in 1954. After Salomon's death, Elias' sisters and mother (the Respondents) asked Elias to account for his stewardship. He refused and when their demands became insistent, he suddenly decamped from Colombia in 1966 with his wife and children without letting his mother and sisters know where he was going. It was not until 1968 that the Respondents were able to locate the Petitioner who was residing in Miami, Florida, at which time this litigation was initiated.

This Statement will focus primarily on the status of the litigation at the time of the entry of the Final Judgment (Petitioner's Appendix 1-8). In November of 1971 the Dade County, Florida Circuit Court, on its own initiative set the case for trial.

At this point in time the litigation has been in existence for three years, the Petitioner had taken six interlocutory appeals from orders of the lower court and the Third District Court of Appeal had as a result of those appeals affirmed orders of the lower court which required the Petitioner to deposit $350,000.00 into the registry of the court, which found the Petitioner in contempt of court for failing to make that deposit (Respondents' Appendix C, page 5), which affirmed a Summary Judgment (Respondents' Appendix D, page 9) on the issue of the Respondents' right to an accounting and which affirmed an order

of the lower court finding the Petitioner in contempt of court for failing to account (Respondents' Appendix E, page 13.).[1]

Immediately after the court had set the case for trial, Respondents moved for an order continuing the trial, since the Petitioner had failed to account and produce documents as ordered by the lower court. A hearing was held on Respondents' motion for a continuance. At the hearing the lower court again ordered Petitioner to produce the records of the partnership and family business which were the subject matter of prior orders of that court, the same having been affirmed by the Third District Court of Appeal of Florida.

Pursuant to that hearing the Court, on November 23, 1971, entered an order (Respondents' Appendix F, page 17) which found that the Petitioner remained in contempt of

[1]The opinions are briefly described as follows: Ganem v. Ganem de Issa, Fla.App. 1969, 225 So.2d 564 (interlocutory appeal from order denying a motion to dismiss complaint on the grounds of the doctrine of forum non conveniens and the doctrine of non interference in the affairs of a foreign business entity); Ganem v. Ganem de Issa, Fla.App. 1969, 227 So.2d 366 (defendant's voluntary dismissal of interlocutory appeal from an order denying a motion to abate on the grounds of prior action pending); Ganem v. Ganem de Issa, Fla.App. 1970, 236 So.2d 153 (consolidated interlocutory appeals from an order requiring defendant to deposit into the registry of the court $350,000.00 or file a surety bond in that amount and an order finding him in contempt for failure to do so); Ganem v. Ganem de Issa, Fla.App. 1970, 239 So.2d 888 (interlocutory appeal from an order granting plaintiffs' right to an accounting); Ganem v. Ganem de Issa, Fla.App. 1971, 245 So.2d 142 (interlocutory appeal from a second order of contempt for failure of defendant to account to plaintiffs).

a previous March 4, 1970, Order for failing to deposit $350,000.00 with the Clerk of the Court, remained in contempt of the Court's previous Order of August 25, 1970, finding the Petitioner in contempt of court for failing to account, and found that the Petitioner had failed to account to Respondents or produce documentation with respect to the family businesses as required by a previous Order of March 5, 1970. The November 23, 1971 Order denied the Respondents' motion for a continuance and ordered Petitioner within five days from the date of the Order, to purge himself from contempt and comply with the Court's Order of March 5, 1970, which required Petitioner to produce documents. Otherwise, the Court ordered that upon the filing of a certificate by counsel for the Respondents that the Petitioner had failed to comply with the Order of November 23, 1971, the Petitioner's Answer would be stricken and judgment entered against him for the relief prayed for in the Respondents' Complaint, together with damages established by affidavit or deposition, submitted by Respondents' counsel.

The Petitioner failed to comply with the Order of November 23, 1971 and Respondents' counsel filed the certificate required by the November 23rd Order. On December 6, 1971 Respondents' witness, Richard C. Welden, came to Florida from New York to have his deposition taken on notice to the Petitioner to establish Respondents' damages. The oral deposition was held and transcribed and the witness was cross-examined by Petitioner's counsel. On December 7, 1971, the lower court entered an Order striking Petitioner's Answer and thereafter, entered the Final Judgment against the Petitioner.

Prior to the Petitioner's departure in 1966 from Colombia, the Petitioner and his two sons had been observed removing papers from the office of Ganem & Co. and La India. A search of this office after Petitioner's departure revealed in an old office safe that had been used only infrequently a bundle of papers relating to bank accounts maintained by the family businesses in the New York branch of The Royal Bank of Canada. The Respondents were unable to find any recent records with respect to these accounts; however, the records found in the safe showed that in December of 1959 or January of 1960, a sum in excess of $860,000.00 was transferred from an account in The Royal Bank in the name of Ganem & Co. to an account in the name of La India. These funds had not been shown in the company's tax returns filed by the Petitioner in Colombia. In 1967 Respondents learned from Petitioner's New York counsel that the account then had a value of approximately $1,500,000.00.

From this information and the other information which was reviewed in the affidavit and deposition of Richard C. Welden, Respondent's damages were computed and Final Judgment entered by the lower court.

The Final Judgment was appealed to the Third District Court of Appeal and affirmed, 269 So.2d 704 (Fla. App. 3rd, 1972). Thereafter, the Petitioner unsuccessfully sought a Writ of Certiorari in the Supreme Court of Florida, 277 So.2d 284 (Fla. 1973) and unsuccessfully appealed to the Supreme Court of Florida, 279 So.2d 871 (Fla. 1973).

Thereafter, the Petitioner filed this Petition for Writ of Certiorari in this Court.

REASONS FOR DISMISSING OR DENYING THE PETITION FOR A WRIT OF CERTIORARI

POINT I

BY REASON OF HIS CONTINUING CONTUMACIOUS CONDUCT, PETITIONER IS NOT ENTITLED TO CALL UPON THE RESOURCES OF THIS COURT FOR A DETERMINATION OF HIS CLAIMS AND HIS PETITION SHOULD BE DISMISSED.

Over three and one-half years ago, the Petitioner failed to appear before and deposit certain funds with the trial court as directed. The court held him in contempt and directed that he be imprisoned in the County Jail of Dade County, Florida until he purged himself of his contempt. Respondents have ever since been unable to locate Petitioner in the United States while Petitioner has from afar availed himself of a series of appeals through a succession of counsel.

This Court has consistently declined to consider the merits of criminal cases in which the party seeking review has escaped "from the restraints placed upon him pursuant to the conviction." *Molinaro v. New Jersey*, 396 U.S. 365, 366, 90 S.Ct. 498, 24 L.Ed.2d 586 (1970); *Bonahan v. Nebraska*, 125 U.S. 692, 8 S.Ct. 1390, 31 L.Ed. 854 (1887); *Smith v. United States*, 94 U.S. 97, 24 L.Ed. 32 (1876). In the *Molinaro* case, supra, the defendant who had been convicted of abortion and was free on bail failed to surrender himself to state authorities and was considered a fugitive from justice. Under the circumstances

this Court declined "to adjudicate his case" and dismissed his appeal stating that he had become disentitled "to call upon the resources of the Court for determination of his claims."

In *Eisler v. United States*, 338 U.S. 189, 69 S.Ct. 1453, 93 L.Ed. 1897 (1949), Gerhart Eisler was convicted of contempt of congress and his petition to this Court for certiorari was granted. After the case was argued but before it was decided, Eisler fled the United States. Under the circumstances this Court ordered the case removed from the docket and the appeal was subsequently dismissed. The instant case is closely analogous to the *Eisler* case to the extent the judgment from which an appeal is sought in the instant case provides for the continuation of the orders of contempt and the sanctions related thereto. (Petitioner's Appendix, pages 4-5) Of course, the judgment also provides for money damages. However as this Court pointed out in *Molinaro v. New Jersey*, 396 U.S. 365, 366, 90 S.Ct. 498, 24 L.Ed.2d 586 (1970), supra, the rationale for refusing to consider an appeal where the appellant has escaped or fled the jurisdiction is not that there is no adjudicable case or controversy with the disappearance of the subject of the litigation but rather that the appellant's conduct had disentitled him "to call upon the resources of the Court for determination of his claims." This rationale would be as applicable to the instant case as to a criminal case.

In *National Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed.46 (1954), a money judgment was obtained against the Union and in supplementary proceedings the Union was directed to

deliver certain bonds to the court as security pending disposition of its appeal from the money judgment. The Union failed to deliver the bonds and was held in contempt just as the Petitioner has been in the instant case on his failure to deposit with the trial court as security $350,000 which he borrowed in Nassau. In the *National Union* case, the state supreme court dismissed the Union's appeal from the money judgment on the basis of the Union's failure to purge itself of contempt. This Court affirmed stating:

> "Petitioner's failure to deliver the specified out-of-state property to the court's receiver frustrated the state court much as the escape of a prisoner would frustrate it in attempting to review his conviction. Where the effectiveness of a money judgment is jeopardized by the judgment debtor, he has no constitutional right to an appeal extending that frustration."

Petitioner has had as much of his day in court as his conduct has entitled him.[2] He has refused to testify; he has refused to post security; he has refused to produce documents; he has refused to account; he has refused to obey the orders of the trial court; he has fled the jurisdiction. Surely by now this unbroken line of contumacious conduct has disentitled Petitioner "to call upon the resources of the Court for determination of his claims" and his petition should be dismissed.

---

[2]The question of whether the striking of Petitioner's answer by the trial court deprived him of any due process right is considered under Point II and is not germane to the present point.

POINT II

ON PETITIONER'S REFUSAL TO SUBMIT TO DISCOVERY, STRIKING HIS ANSWER AND RENDERING A DEFAULT JUDGMENT AGAINST HIM WAS A SANCTION IMPOSED IN ACCORDANCE WITH THE LAWS OF FLORIDA AND THE DECISIONS OF THIS COURT.

Under Rule 19 this Court has set down the considerations which will govern review on certiorari. Where the appeal is from the decision of a state court the decision must decide a federal question of substance which either has not heretofore been determined by this Court or which is decided in a way which is probably not in accord with applicable decisions of this Court.

Presumably therefore a petition for a writ of certiorari is not an occasion to argue the merits of the decision below but rather to show a novel decision on a federal question or a conflict with prior decisions of this Court.

Under Point II of his petition, Petitioner argues that he was denied due process when the trial court struck his answer and entered judgment against him. He claims this result is contrary to the rules expressed in *Hovey v. Elliott*, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897) and *Hammond Packing Company v. Arkansas*, 212 U.S. 322, 29 S.Ct. 370, 53 L.Ed. 530 (1909). The *Hovey* case stands for the proposition that it is a violation of due process to strike a defendant's answer and enter a *decree pro confesso* to punish him for contempt. The *Hammond* case stands for the proposition that where a defendant without

justifiable excuse fails to produce evidence necessary for orderly adjudication, striking defendant's answer and rendering a default judgment preserves rather than denies dues process. This sanction is expressly granted to the Florida courts under Rule 1.380 (b) (2) of the Florida Rules of Civil Procedure (Petitioner's Appendix, pages 16 and 17). In the decision of the Florida District Court on which the judgment appealed from is based the court referred to the *Hovey* and *Hammond* cases and other authority on the question involved and stated:

> "We have fully examined these authorities and concluded that the rule in Hammond Packing Company governs the instant case." (Petitioner's Appendix, page 15)

It's hard to see how this result can be considered either a novel decision on a constitutional point or one contrary to the decisions of this Court since the decision of the court below was expressly based on this Court's decision in the *Hammond Packing* case.

Lacking a decision that is either novel or in conflict, Petitioner can only argue the merits of the decision. However in this respect Petitioner concedes that the order striking his answer was based on his failure to obey several prior orders of the Circuit Court including one dated March 5, 1970 (affirmed by the District Court) in which the trial judge had granted summary judgment to the Respondents on their demand for an accounting and directed Petitioner to account to the Respondents and "exhibit for the purpose of copying to [Respondents] all documents, records, bank statements of and/or pertaining to or related to Ganem & Cia. * * * Fabrica de Manteca y Aceitas

Vegetales * * *." In addition, although the order striking defendant's answer didn't expressly refer to the fact, Respondents had noticed the deposition of Petitioner and on the scheduled date Petitioner had failed to appear without excuse. (Respondent's Appendix, page 3) Having refused to submit to an examination which would have covered all matters at issue, and refused to produce documents under his control and refused to account, Petitioner was clearly subject to having his answer stricken under the Florida Rules of Civil Procedure and the decisions of this Court. The fact that in addition he was in contempt of court should not give him any immunity from this sanction.

When the trial judge who had originally been assigned to this case was elected to the Florida Supreme Court, a new trial judge was assigned and on November 1, 1971 he ordered that this case be set down for trial. Respondents moved to cancel the trial because of the difficulties of proof created by Petitioner's failure to make discovery. On the hearing of Respondents' motion on November 16, 1971, Mr. Lewis (for the Respondents) pointed out that Petitioner had consistently failed to account and otherwise furnish information in spite of numerous court orders. Thereafter, the following colloquy took place (Mr. Kaplan representing the Petitioner):

> "THE COURT: You can file some pleadings with the Court, asking this Court to hold this person in contempt.
>
> "MR. LEWIS: He was already held in contempt by Judge Dekle and the Third District Court has affirmed that contempt order on two occasions.

"THE COURT: I can strike his answers and there are other punitive possibilities that would be open for me to do when he is presented to me.

"I am not going to have the thrust of this trial held up by a Defendant's failure to obey an order of this Court.

MR. LEWIS: If it please the Court, I had already filed an order requiring him to produce the records and Judge Dekle ordered him to produce the records in March of 1970, and he has failed to produce these records and this information which we need to prove our damages that are involved."

The Court admonished Petitioner's counsel that Petitioner had better produce the necessary records and information or suffer the consequences and Respondents' counsel stated:

"MR. LEWIS: The problem we have had in trying to track down these records for four years, and he still hasn't produced the necessary information, your Honor.

"THE COURT: Counsel, you haven't practiced before me, have you?

"MR. LEWIS: No sir.

"THE COURT: Prepare the order and write and say the usual pleadings. I want this case to go on.

"Mr. LEWIS: He is to produce this information when?

"THE COURT: To produce it forthwith.

"MR. LEWIS: Or what, your Honor; what exact language should be there?

"THE COURT: Or I might put him in jail.

"MR. LEWIS: He has already been threatened with jail twice, your Honor.

"THE COURT: Well, why hasn't the Sheriff picked him up?

"MR. LEWIS: We can't find him, your Honor.

"THE COURT: That's something else if you can't find him. I can strike his answers, or other things like that, but I am going to try this case. You prepare whatever order you want.

"MR. LEWIS: All right, fine, sir."

(Thereupon the hearing was concluded)

At this point the court had held Petitioner in contempt; denied him the right to support his defenses; and directed his arrest. As Petitioner persisted in his refusal to make discovery, the trial court had no sanction left to impose except to strike Petitioner's answer and enter judgment against him which it did.

The decision of the Florida District Court below with respect to the propriety of striking Petitioner's answer was based not only on this Court's decision in *Hammond Packing Company v. Arkansas*, 212 U.S. 322, 29 S.Ct. 370, 53 L.Ed. 530 (1909) but also on the Florida Rules of Civil Procedure (Petitioner's Appendix, bottom of page 14) and Florida case law (Petitioner's Appendix, top of page 15). As this Court stated in *Yankovich v. Indiana Toll Road Commission*, 379 U.S. 487, 85 S.Ct. 493, 13 L.Ed.2d 439 (1965):

> "It is undoubtedly 'the settled rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment.' Fox Film Corp. v. Muller, 296 U.S. 207, 210, 56 S.Ct. 183, 184, 80 L.Ed. 158." Cramp v. Board of Public Instruction, 368 U.S. 278, 281, 82 S.Ct. 275, 277, 7 L.Ed.2d 285."

Accordingly, the petition should be dismissed not only because the decision below as to striking defendant's answer is in harmony with prior decisions of this Court but also because it is based on an independent state ground adequate to support it.

POINT III

THE LAW APPLIED BY THE TRIAL COURT IN SUPPORT OF ITS JUDMENT HAS NOT DEPRIVED PETITIONER OF ANY CONSTITUTIONAL OR TREATY RIGHT.

Petitioner summarizes his Point I in the headnote as follows:

> "Entry of a final judgment in an action governed by the law of a civil law jurisdiction (Colombia) in absence of evidence or proof of such law conflicts with the due process clause of of the Fourteenth Amendment***."

This argument assumes:

(1) The action is governed by the law of Colombia.

(2) There is no proof of such law in the record.

With respect to these two points the District Court stated:

(1) "The conflicts rule of Florida is that in tort the lex loci delecto governs the action.*** Under the averments of the complaint a stronger case is made out that New York, rather than Colombian law applies." (Petitioner's Appendix, page 17)

(2) "Furthermore, for over three years the circuit court has had before it certain statutory and judicial law of Colombia, including law with respect to an accounting. These matters, which are in the record before us, are consistent in large part with the law of Florida. Therefore, this issue may be resolved by resort to the doctrine of the law of the case. If after all this time, defendant decides that he should have submitted other or additional proof of Colombian law, defendant cannot now claim that through his own failure, he has been deprived of due process and treaty rights." (Petitioner's Appendix, page 18)

Among the additional reasons which the District Court indicated were available to support a determination that Petitioner was not deprived of due process on the question of applicable law were the following:

(3) If Petitioner had been prevented from introducing evidence as to Colombian law, he would not thereby have been deprived of due process as this would have been a sanction authorized by his misconduct. (Petitioner's Appendix, page 17)

(4) "(T)he law of Colombia, like all civilized countries, recognizes certain fundamental principles, such as the unlawful taking of One Million, Five Hundred Thousand Dollars (U.S.) in bank accounts belonging to family members or a family business enter-

> prise is a basis for relief of the injured parties." (Petitioner's Appendix, page 18)

Petitioner claims that the holding of the court below on the question of applicable law reaches a result which is contrary to this Court's decision in *Cuban Railroad Company v. Crosby*, 222 U.S. 473, 32 S.Ct. 132, 56 L.Ed. 274 (1912). In that case this Court held that Federal courts could not assume without proof that the law of Cuba would be the same as that of the forum, New Jersey, with respect to a complex presumption as to who bears the risk of injury where an employer has promised to replace defective machinery. However, this Court stated that it may be that in dealing with rudimentary contracts or torts made or committed abroad, such as promises to pay money or the conversion of goods, our courts would assume a liability to exist if nothing to the contrary appeared, stating: "Such matters are likely to impose an obligation in all civilized countries." The instant case involves no one other than a mother and her four children who are all before the Court. These five people comprise all persons who might have any interest in either Ganem & Co. or La India either as a partner, owner, manager, director or officer. The mother and three of the children seek an accounting from the fourth child for his conversion of funds in which all had an interest. Surely no civilized country would deny an accounting under such circumstances. Petitioner has never suggested otherwise.

To summarize, the District Court below indicated that the following grounds, among others, were available to support the judgment on the question of applicable law:

(a) There is no showing that Colombia law applies.

(b) The trial court had before it statutory and judicial law of Colombia submitted by the Petitioner.

(c) Petitioner is bound by the doctrine of the Law of the Case.

(d) By reason of Petitioner's refusal to make discovery, the trial court had the authority as a sanction to deny Petitioner the right to submit evidence on the question of governing law or any other matter.

(e) The causes of action asserted by Respondents in this case are so basic as to be recognized in all civilized countries.

The first two grounds are factual; the second two are matters of state law; and the last is recognized in this Court's decision in *Cuba Railroad Company v. Crosby*, 222 U.S. 473, 32 S.Ct., 132, 56 L.Ed. 274 (1912), supra, and of course the first four grounds distinguish the *Cuba Railroad Company* case from the instant case. Accordingly, the decision below on the question of applicable law is in harmony with prior decisions of this Court and also is based in part on independent state grounds adequate to support it.

In addition to his due process argument, Petitioner also claims that he has been deprived of rights secured to him by virtue of Articles 7 and 13 of the Treaty of

Peace, Amity, Navigation and Commerce with Colombia. The fact is Petitioner's rights under the Treaty are considerly more narrow than under the United States Constitution. For example, under Article 13 of the Treaty (cited on pages 4 and 5 of the Petition for Certiorari) citizens have the right only "to be present at the decisions or sentences of the tribunals, in all cases which may concern them* * *." When the predecessor to the present Treaty with Colombia was first negotiated in 1824, the Americans suggested that citizens "have the right to be present at the proceedings in such cases* * *." The Colombians indicated that such complete access to judicial proceedings would not be permitted under Colombian law. Accordingly the narrow right to be present only at the decision has been carried over into the present Treaty. R. Wilson, United States Commercial Treaties and International Law, pages 228-229 (1960).

Rather than giving Petitioner any additional rights, the Treaty imposes upon him the specific obligation to submit himself "to the laws, decrees and usages" established.[3] This the Petitioner has refused to do.

---

[3]Article 3rd

The two high contracting parties, being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens of each may frequent all the coasts and countries of the other, and reside and trade there, in all kinds of produce, manufactures and merchandize; and that they shall enjoy, all the rights, privileges and exemptions, in navigation and commerce, which native citizens do or shall enjoy, submitting themselves to the laws, decrees and usages there established, to which native citizens are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties respectively according to their own separate laws.

Treaty of Peace, Amity, Navigation and Commerce (9 Stat. 881, 18 ibid. pt. 2 Public Treaties, pp. 550-559)

POINT IV

THE DIRECTION IN THE FINAL JUDGMENT FOR THE PAYMENT INTO COURT OF $500,000.00 IS ENCOMPASSED IN RESPONDENTS' DEMAND IN THE COMPLAINT FOR AN ACCOUNTING.

In Point III of his petition, Petitioner alleges that the Final Judgment awarded $500,000.00 to the Respondents individually based on certain promissory notes payable to Trans American and that there is no cause of action in the Complaint to cover this award.

Defendant misreads the Final Judgment. It does not award the $500,000.00 to Respondents individually. The Final Judgment provides:

> "Ordered, adjudged and decreed that the defendant, Elias Ganem, shall within ten (10) days from the date of this judgment deposit in the office of the Clerk of this Court Five Hundred Thousand Dollars and No/100th ($500,000.00) (U.S. Dollars) to be divided among the parties upon further order of the court***" or post a bond in the amount of $500,000.00. (Petitioner's Appendix, pages 3, 4).

The question of the ultimate disposition of this sum and any effect such disposition may have on the Trans American notes has been reserved for further proceedings before the lower court. Accordingly, Petitioner is in no way prejudiced.

The direction in the Final Judgment quoted above is encompassed in Respondent's fifth cause of action in the Complaint for an accounting.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be dismissed or denied.

Respectfully submitted,

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By
Of Counsel

CERTIFICATE OF SERVICE

I CERTIFY that ~~a copy~~ 3 copies of the foregoing has been furnished by mail to William E. Sadowski, Esq., Helliwell, Melrose & Dewolfe, Attorneys for Petitioner, 1401 Brickell Avenue, Miami, Florida 33131, this 23 day of November, 1973.

Of Counsel